

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH E. SINGLETON,

Plaintiff,

V.

STATE OF WASHINGTON DEPARTMENT
OF CORRECTIONS MEDICAL
DEPARTMENT.

Defendant.

Case No. C06-5572 FDB/KLS

REPORT AND RECOMMENDATION

**Noted For:
June 20, 2008**

Before the Court are the motions for summary judgment of Plaintiff Joseph E. Singleton (Dkt. # 21) and Defendant State of Washington Department of Corrections Medical Department (DOC Medical Department). (Dkt. # 42). Plaintiff seeks judgment in his favor on his claims that Defendant was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. In response, Defendant submits its motion for summary judgment, arguing that Plaintiff's claims must be dismissed because he has failed to state a claim of deliberate indifference and because the DOC Medical Department is not a "person" within the meaning of 42 U.S.C. § 1983.¹

¹Plaintiff's motion for summary judgment was filed seven days after Defendant filed its answer and Defendant sought an extension of time pursuant to Fed. R. Civ. P. 56(f), which was granted. (Dkt. # 27). Both motions are now noted for April 25, 2008. (Dkts. # 37, 42). Defendant requests that its motion for summary judgment be considered as its response to Plaintiff's motion. (Dkt. # 46).

1 In support of his motion, Plaintiff submits his Affidavit, in which he verifies that everything
2 stated in his motion is true. (Dkt. # 21, Attach. 1). Plaintiff has filed no response to Defendant's
3 motion for summary judgment. Under Local Rule 7 (b)(2) failure to file papers in opposition to a
4 motion may be deemed by the court as an admission the motion has merit.

5 In support of its motion, Defendant submits the deposition testimony of Plaintiff, with attached
6 exhibits. (Dkt. # 42, Exhs. 1 and 2).

7 After careful review of the motions, supporting declarations and documents, and balance of the
8 record, and viewing the facts in the light most favorable to the Plaintiff, the undersigned recommends
9 that Plaintiff's motion be denied and Defendant's motion be granted. However, a review of Plaintiff's
10 complaint reveals an additional allegation that at the time of filing, the Court should have required
11 Plaintiff to replead. The parties do not address that allegation in their motions. Out of an abundance
12 of caution, the undersigned recommends that Plaintiff be granted leave to amend his complaint with
13 regard to that sole allegation.

14 **I. FACTS**

15 Plaintiff Joseph Singleton was incarcerated at Clallam Bay Corrections Center (CBCC) in
16 Clallam Bay, Washington, at the time of the incident he complains of in his complaint.
17 Specifically, Plaintiff claims he is transgender and that he was denied transsexual hormone
18 treatment while at CBCC. (Dkt. # 6, p. 3). The only Defendant named by Plaintiff in his complaint
19 is the DOC Medical Department. *Id.*, pp. 2-3; Exhibit 1, Deposition of John Singleton, p. 27, ll. 14-
20 21. No individuals have been named as defendants. *Id.* Plaintiff seeks an order directing that he
22 receive transsexual hormone treatment, medication therapy and sex change surgery. (Dkt. # 6, p.
23 4). Plaintiff seeks no monetary damages. *Id.*

24 During his deposition, Plaintiff was asked whether he had ever been diagnosed by a mental
25 health professional as transgender. (Dkt. # 42, Exh. 1, p. 16, ll. 13-18). Plaintiff replied that he had
26 been so diagnosed one time while in Central Lock-up in New Orleans in 1992. *Id.* However
27

1 Plaintiff admitted that Dr. Juarez was not a mental health doctor but a “physical” doctor. *Id.*, p. 18,
2 ll. 14-16.

3 Other than Dr. Juarez, no other doctor has diagnosed Plaintiff as being transgender. *Id.*, p.
4 20, l. 13 to p. 21, l. 25. It is Plaintiff’s understanding that all of his medical records from Central
5 Lock-up in New Orleans were destroyed in the aftermath of Hurricane Katrina. *Id.* The mental
6 health professional Plaintiff saw at CBCC, Bert Jackson, informed Plaintiff that he was not
7 qualified to make a gender dysphoria diagnosis. *Id.*, p. 25, ll. 7-12. Plaintiff never began any
8 hormone therapy at any time before his incarceration with DOC. *Id.*

9
10 Attached to Plaintiff’s complaint is the grievance Plaintiff filed relating to denial of
11 hormone treatment. (Dkt. # 4, p. 5). Plaintiff identified his grievance as Exhibit 2 to his deposition.
12 *Id.*, p. 22, ll. 8-18. Defendant does not dispute that Plaintiff exhausted the DOC grievance process
13 relating to this grievance prior to filing suit.

14
15 In investigating Plaintiff’s grievance, DOC found he had never begun hormone therapy for
16 gender dysphoria prior to incarceration. *Id.*, Exh. 2 attached to Exh.1. Plaintiff did not meet the
17 protocols for hormone treatment and the grievance response read, in part, as follows:

18
19 The information gathered indicates that you must have met the
20 qualifications of being diagnosed with gender dysphoria and been on
21 the medication appropriately prescribed as part of a formal gender
22 modification program, and taken it chronically without interruption
23 prior to incarceration in order to be considered for continuation of
treatment. There is no documentation from Orleans Parish Prison that
you have been prescribed the medication. Following the Offender
Health Care Plan, your request for medication is considered a Level 3
and not medically indicated, and does not meet DOC protocol.

24 *Id.*, Exh. 2.

25 Plaintiff also alleges that his claim is a “refile” of his earlier lawsuit, Case No. C02-
26 5477FDB, which was dismissed without prejudice for failure to exhaust administrative remedies.
27

1 (Dkt. # 19 therein). A review of the Court's records indicates that Plaintiff's previous lawsuit
 2 involved Grievance Log No. 0213932, dated July 31, 2002, against Dr. Johnston for refusal to
 3 prescribe Depo-Provera and for sexual harassment. *Id.* Plaintiff alleges that he has now completed
 4 the grievance process but he fails to allege any facts upon which relief may be granted with regard to
 5 that claim. Dkt. # 6, p. 3.

7 II. STANDARD OF REVIEW

8 In examining the motions for summary judgment before it, the Court must draw all inferences
 9 from the admissible evidence in the light most favorable to the non-moving party. *Addisu v. Fred*
 10 *Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000). Summary judgment is proper where there is no
 11 genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
 12 Fed.R.Civ.P. 56(c). The moving party bears the initial burden to demonstrate the absence of a genuine
 13 issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

15 Once the moving party has met its burden, the opposing party must show that there is a genuine
 16 issue of fact for trial. *Matsushita Elect. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87
 17 (1986). The opposing party must present significant and probative evidence to support its claim or
 18 defense. *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991).

19 III. DISCUSSION

21 A. DOC Medical Department Is Not a Person Under 42 U.S.C. § 1983

22 To be actionable under 42 U.S.C. § 1983, a "person" must be acting under color of state law.
 23 The state of Washington, its agencies and individual employees acting in the official capacities do
 24 not fall within the definition of this term. "[N]either a state nor its officials acting in their official
 25 capacities are "persons" under § 1983." *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71, 109
 26 S. Ct. 2304, 2312 (1989); *Rains v. State*, 100 Wn.2d 660, 667-68, 674 P.2d 165 (1983).

1 Defendant argues that Plaintiff's claims must be dismissed because he lists the DOC
2 Medical Department as the only defendant in his complaint and does not name any individual
3 employees that allegedly caused him harm. Defendant argues that because the DOC Medical
4 Department is a branch of an agency of the state of Washington, it is not considered a "person" as
5 that term is defined in case law for purposes of liability under 42 U.S.C. § 1983.
6

7 The undersigned agrees that Defendant is entitled to dismissal on this basis and would
8 ordinarily recommend that Plaintiff be given an opportunity to amend his complaint to name a
9 proper defendant. However, as is more fully explained below, leave to amend in this case would be
10 futile because Plaintiff's claim that Defendant violated his Eighth Amendment rights by refusing
11 him transsexual hormone treatment is without merit. *See Doe v. United States*, 58 F.3d 494 (9th
12 Cir. 1995); *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000) (en banc) (when dismissing a complaint for
13 failure to state a claim, the district court should grant leave to amend unless amendment would be
14 futile).
15

16 **B. Plaintiff's Eighth Amendment Claim - Refusal of Hormone Treatment**

17 Plaintiff claims that Defendant violated his rights under the Eighth Amendment of the
18 Constitution because he is transgender and Defendant denied him transsexual hormone treatments
19 while he was housed at CBCC. (Dkt. # 6, p. 3). Plaintiff states that he never received any treatment
20 for transsexualism and was only interviewed by Dr. Bert Jackson to determine whether Plaintiff was
21 transsexual to assist in getting treatment from a "higher doctor at CBCC Medical Department."
22 (Dkt. # 21, p. 2). Plaintiff was denied transsexual treatment by the "higher doctor" at CBCC
23 Medical Department. *Id.*

24 Deliberate indifference to an inmate's serious medical needs violates the Eighth
25 Amendment's proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97,
26

1 104 (1976). Deliberate indifference includes denial, delay or intentional interference with a
 2 prisoner's medical treatment. *Id.* at 104-5; *see also Broughton v. Cutter Labs.*, 622 F.2d 458, 459-
 3 60 (9th Cir. 1980). To succeed on a deliberate indifference claim, an inmate must demonstrate that
 4 the prison official had a sufficiently culpable state of mind. *Famer v. Brennan*, 511 U.S. 825, 836
 5 (1994). A determination of deliberate indifference involves an examination of two elements: the
 6 seriousness of the prisoner's medical need and the nature of the defendant's response to that need.
 7 *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992).

8 To prevail, the plaintiff must "show that the course of treatment the doctors chose was
 9 medically unacceptable under the circumstances ... and the plaintiff must show that they chose this
 10 course in conscious disregard of an excessive risk to plaintiff's health." *Jackson v. McIntosh*, 90
 11 F.3d 330, 332 (9th Cir. 1996), cert. denied, 519 U.S. 1029, 117 S. Ct. 584 (1996). The indifference
 12 to medical needs must be substantial. Inadequate treatment due to malpractice, or even gross
 13 negligence does not amount to a constitutional violation. *Estelle*, 429 U.S. at 106; *Wood v.*
 14 *Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990). A difference of medical opinion does not
 15 amount to deliberate indifference to serious medical needs. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th
 16 Cir. 1989); *Jackson*, 90 F.3d at 332.

17 There is no dispute that transsexualism is a complex medical and psychological problem or
 18 that its treatment may present a "serious medical need" under the *Estelle* formulation. *See e.g.*
 19 *Meriwether v. Faulkner*, 821 F.2d 408, 412-12 (7th Cir. 1987) (and cases cited therein). These
 20 issues are not in dispute. Plaintiff alleges here that despite the fact that he was diagnosed by Dr.
 21 Bert Jackson as a transsexual, he was refused transsexual hormone treatment. (Dkt. # 6, p. 3).

22 Accepting Plaintiff's allegations and averments in the light most favorable to Plaintiff, there
 23 is no evidence that Plaintiff has, in fact, been diagnosed with gender dysphoria. Plaintiff has
 24

1 identified no expert and has presented no summary judgment evidence of such a diagnosis. The
2 Court has only the hearsay testimony of Plaintiff that at one time, a “physical” doctor who
3 examined Plaintiff while he was in Central Lock-up in New Orleans in 1992, diagnosed him as a
4 transgender. (Dkt. # 42, Exh. 1, p. 16, ll. 13-18). Plaintiff also admits that he never began any form
5 of hormone therapy for gender dysphoria prior to his incarceration with DOC. *Id.*
6

7 Plaintiff was informed in response to his grievance that, pursuant to DOC’s protocols
8 outlined in its Offender Health Plan, Plaintiff does not qualify for initiation of hormone therapy.
9 Plaintiff has provided no authority that DOC’s approach is medically unacceptable under the
10 circumstances and/or that it was done with a conscious disregard of an excessive risk to his health.
11

12 As Plaintiff has not raised a factual dispute as to any medical indifference of Defendant on
13 Plaintiff’s claim that he was refused transsexual hormone treatment even though he was diagnosed
14 as a transsexual, the undersigned recommends that Plaintiff’s motion for summary judgment (Dkt. #
15 21) be denied and that Defendant’s motion for summary judgment (Dkt. # 42) be granted.

16 **C. Plaintiff’s “Refiled Claim”**

17 As noted above, Plaintiff also alleges that his claim is a “refile” of his earlier lawsuit, Case
18 No. C02-5477FDB, which was dismissed without prejudice for failure to exhaust administrative
19 remedies. (Dkt. # 19 therein). In that lawsuit, Plaintiff’s Grievance Log No. 0213932, dated July
20 31, 2002, Plaintiff’s claim against Dr. Johnston was for refusal to prescribe Depo-Provera and for
21 sexual harassment. *Id.* Plaintiff alleges that he has completed the grievance process with regard to
22 that claim. (Dkt. # 6, p. 3).

23 Plaintiff should be granted leave to amend his Complaint to specifically re-allege a claim
24 under 42 U.S.C. § 1983 against Dr. Johnston or other individuals. Plaintiff should allege how
25 individually named defendants caused or personally participated in violating his constitutional
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1 rights. Plaintiff must set out sufficient facts outlining his causes of action against particular named
2 defendants.

3

4 **IV. CONCLUSION**

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6 For the reasons stated above the Court should **DENY** Plaintiff's motion for summary judgment
7 (Dkt. # 21) and **GRANT** Defendant's motion for summary judgment (Dkt. # 42), and that Plaintiff be
8 granted leave to amend with regard to facts underlying Grievance Log No. 0213932 previously
9 referred to in Case No. C02-5477FDB.

10 A proposed order accompanies this Report and Recommendation. Pursuant to 28 U.S.C. §
11 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10)
12 days from service of this Report and Recommendation to file written objections. *See also* Fed. R.
13 Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of
14 appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule
15 72(b), the Clerk of the Court is directed to set the matter for consideration on **June 20, 2008**, as
16 noted in the caption.

17
18 DATED this 27th day of May, 2008.

19
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21 
22 Karen L. Strombom

23 United States Magistrate Judge